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On the subject of:

Executives according to the European labor law

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On the one hand, the European law does not include a general responsibility for labor law but on the other hand, it includes responsibility for the social security of workers in the Member States. As in article 151 of the Treaty on the Functioning of the European Union, the objectives of the social policy are: " […] the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion."

The European law uses the concept of a worker (for example in article 45 of the Treaty on the Functioning of the European Union) but not the concept of an executive. This concept actually comes from the law of the Member States and their own national legal system.

There are various definitions of executives in Germany: Executives ties in with the typical position between employers and non-executive employees as defined in § 5 (3) s. 3 and 4 of the Work Constitution Act. These executives take decisions on behalf and on the account of the employer. In detail, these decisions include strategic corporate management as well as human resources management like recruitment and redundancies of other employees. According to § 14 (2) of the German Protection Against Unfair Dismissal Act, the concept of executives follows the principle of independent authority to engage and dismiss employees. In contrast, persons authorized to represent employees by law or by constitution are not executives under German law. This results from various provisions of national labor law, for example: § 5 (2) of the Works Constitution Act, § 5 (1)(a) of the Labor Court Act and § 14 (1) of the Protection Against Unfair Dismissal Act.

In France, they use the term "cadre", in Italy "dirigenti" and in Spain "personal de alte dirección" to define the group of executives.

As a result of the superiority of the European Law over inferior national law, a protection order applies to all employees, i.e. to workers as well as to white collar employees, including those who are defined as executives or company representatives under individual national legal systems. Exemptions are admitted under national law, only if the European Law permits such them.

In several cases, the Court of Justice declared the exclusion of executives unlawful at European level. An example is given by the ECJ judgment of 16 December 1993 in the case C-334/92 "Wagner Miret", which has taken place in Spain. The exclusion of executives from the protection of employees in the event of the insolvency of their employer was unlawful, because the Council Directive 80/987/EEC (Annex (1)) as amended by Directive 87/164/EEC doesn`t distinguish between different kinds of employees.

In a ruling of 13 February 2014 (C-596/12 – "Commission v Italy"), the Court of Justice decided that the exclusion of executives ("dirigenti") from the Collective Redundancies 89/59/EC violates European Union Law.